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JUN 14 2007

OFFICE OF PETITIONS

In re Patent No. 7,139,081 : DECISION ON REQUEST
Peter De Groot : FOR RECONSIDERATION OF
Issue Date: November 21, 2006: PATENT TERM ADJUSTMENT
Application No. 10/659,060 : and
Filed: September 9, 2003 : NOTICE OF INTENT TO ISSUE
Atty Docket No. 09712-332001 : CERTIFICATE OF CORRECTION
/Z-433 :

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT under 37 CFR 1.705(d), filed January 19, 2007. Patentee requests that the patent term adjustment on the issued patent be corrected from two hundred thirty-five (235) days to two hundred seventy-eight (278) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **two hundred seventy-eight (278)** days.

On November 21, 2006, the application matured into U.S. Patent No. 7,139,081, with a revised patent term adjustment of 235 days. On January 19, 2007, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), requesting that the Patent Term Adjustment be corrected to 278 days. Patentee disputes the reduction of 43 days associated with the filing of a miscellaneous incoming letter after the mailing of the notice of allowance. Patentee states that the issue fee payment received on October 10, 2006 was erroneously recorded as a miscellaneous incoming letter.

A review of the application history reveals that in addition to an issue fee payment on October 10, 2006, patentee filed a letter regarding the notice of allowance. Nonetheless, the review reveals that entry of a period of reduction pursuant to 37 CFR 1.704(c)(10),¹ the reduction is not warranted. As stated in MPEP 2732:

Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The submission of the following papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office).

A review of the letter filed October 10, 2006 reveals that it was a "Comments on Statement for Reasons of Allowance," as provided for in 6 above. Thus, no reduction was warranted.

In view thereof, the patent should have issued with a patent term adjustment of two hundred seventy-eight (278) days.

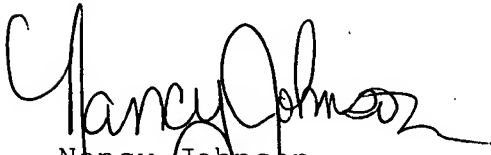
The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

¹ 1.704(c)(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) Four months.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **TWO HUNDRED SEVENTY-EIGHT (278)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Attachment: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,139,081 B2

DATED : November 21, 2006

INVENTOR(S) : De Groot

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (235) days

Delete the phrase "by 235" and insert – by 278 days--